

5. *Midwest Minerals, Inc.*, Docket No. CENT 89-87-M. (Issues include initial consideration of motion for remand.)

6. *Southern Ohio Coal Company*, Docket No. WEVA 89-124-R, etc. (Issues include consideration of a motion to strike.)

7. *Arnold Sharp v. Big Elk Creek Coal Company*, Docket No. KENT 89-147-D. (Consideration of merits of a Petition for Interlocutory Review.)

8. *Joseph Delisio v. Mathies Coal Co.*, Docket No. PENN 89-8-D. (Consideration of motions seeking leave to file amicus curiae briefs.)

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-9590 Filed 4-20-90; 1:25 pm]

BILLING CODE 6735-01-M

INTERSTATE COMMERCE COMMISSION Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, May 1, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission 12th and Constitution Avenue NW., Washington, DC 20423

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: As set forth below in the appendix.

CONTACT PERSON FOR MORE

INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,
Secretary.

APPENDIX

Voting Conference Agenda

May 1, 1990

Docket No. AB-6 (Sub No. 314), Burlington Northern Railroad Company—Abandonment in Norman and Clay Counties, MN.

Docket No. 37626, Consolidated Papers, Inc., et al. v. Chicago and North Western Transportation, et al.

Docket No. 40200, Charges for Movement of Empty Cars, Buffalo & Pittsburg Railroad, Inc.

Docket No. 40220, Bessemer and Lake Erie Railroad Co.—Petition for Declaratory Order—Interchange Facilities and Trackage Rights.

Finance Docket No. 25103, Illinois Gulf Central Railroad—Acquisition—Gulf, Mobile & Ohio Railroad Co., Illinois Central Railroad Co.

Docket No. MC-C-30163, Motor Carrier Audit & Collection Co.—Petition for Declaratory Order—Recyclable Materials Within the Scope of 49 U.S.C. 10733.

Docket No. MC-C-30146, The May Department Stores Company and Volume Shoe Corporation—Petition for Declaratory Order—Transportation Within Single State of Merchandise Imported by Water.

Docket No. MC-1515 (Sub-No. 407), Greyhound Lines, Inc., Exit Petition—North Carolina.

[FR Doc. 90-9571 Filed 4-20-90; 11:23 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 23, 30, May 7, and 14, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 23

Thursday, April 26

2:00 p.m.

Briefing on Containment Performance Improvement Program (Other Than Mark I) (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, April 27

9:00 a.m.

Briefing on Evolutionary Light Water Reactor Certification Issues and Related Regulatory Requirements (Public Meeting)

Week of April 30—Tentative

Thursday, May 3

2:00 p.m.

Briefing on EEO Program (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 7—Tentative

Thursday, May 10

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 14—Tentative

Wednesday, May 16

2:00 p.m.

Briefing on Proposed Rule on License Renewal (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE

INFORMATION: William Hill (301) 492-1661.

Dated: April 19, 1990.

Andrew L. Bates,

Office of the Secretary.

[FR Doc 90-9016 Filed 4-20-90; 2:38 pm]

BILLING CODE 6210-01-M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, and Friday, April 26-27, 1990.

TIME: 9:00 a.m. to 5:30 a.m.

PLACE: The United States Institute of Peace, 1550 M Street N.W. (ground floor, conference room), Washington D.C.

STATUS: Open session—Thursday 9:15 a.m. to 5:30 p.m.

Portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the thirty-ninth meeting of the Board. Consideration of grant application matters.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs Office, Telephone (202) 457-1700.

Dated: April 19, 1990.

Bernice J. Carney,

Director, Administrative Office, The United States Institute of Peace.

[FR Doc. 90-9638 Filed 4-24-90; 4:06 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register

Vol. 55, No. 79

Tuesday, April 24, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1770

Accounting Requirements for REA Telephone Borrowers

Correction

In rule document 90-2388 beginning on page 3387 in the issue of Thursday,

February 1, 1990, make the following correction:

§ 1770.15 [Corrected]

On page 3393, in § 1770.15, in the table, in the third column, in the sixth entry, under *Telecommunications Plant Under Construction—Long Term—Force Account*, at the end of the second line, "labor engineering, supervision" should read "labor, engineering, supervision".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018-AB37

Migratory Bird Permits

Correction

In rule document 89-26762 beginning on page 47524 in the issue of Wednesday, November 15, 1989, make the following correction:

§ 21.44 [Corrected]

In § 21.44, on page 47526, in the first line, "country" should read "county".

BILLING CODE 1505-01-D

Federal Register

**Tuesday
April 24, 1990**

Part II

Department of Justice

Bureau of Prisons

28 CFR Parts 549 and 552

**Control, Custody, Care, Treatment and
Instruction of Inmates Suicide Prevention
Program; Interim Rule**

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 549 and 552

Control, Custody, Care, Treatment and Instruction of Inmates Suicide Prevention Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on the Suicide Prevention Program. This amendment clarifies the procedures to be followed upon the identification, referral and assessment of imminently suicidal inmates, and adds provisions regarding the role of the Program Coordinator, staff training, housing for suicidal inmates, custodial issues for Special Housing Unit status, transfer to other institutions, and analysis of suicides. The intended effect of this amendment is to provide for the safety of inmates.

DATES: Effective April 24, 1990; comments due by June 8, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, room 760, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its rule on the Suicide Prevention Program. The revised rule incorporates procedures intended to help preserve the life of inmates. The revised rule is also being redesignated in order to clarify the administrative status of inmates under this program. A final rule on the Bureau's Suicide Prevention Program was published in the *Federal Register* June 23, 1982 (47 FR 27218). A summary of specific changes to that rule follows.

New § 552.40 consists of the first two sentences of former § 549.70. The remainder of former § 549.70 is incorporated into new § 552.42. New § 552.41 specifies that each Bureau of Prisons institution, other than medical centers, will implement a suicide prevention program which conforms to the procedures outlined in this rule; medical centers develop and submit for approval suicide prevention program procedures consistent with the specialized nature of the institutions and the intent of this rule. Section 552.43 covers procedures for the Suicide Prevention Program formerly contained in § 549.71. Paragraph (a) of § 552.43 specifies that all staff will be trained to recognize signs indicative of a potential suicide and the appropriate referral

process. Similar provisions were contained in former paragraphs (a) and (g) of § 549.71. Paragraph (b) of § 552.43 specifies procedures for screening newly admitted inmates. All newly admitted inmates will be screened by a physician's assistant within twenty-four hours of admission to the institution for both obvious and subtle signs of potential for suicide. Psychology staff will conduct a second, more comprehensive appraisal within 14 days of an inmate's admission to institutions other than Metropolitan Correctional Centers, Federal Detention Centers or Federal Detention Units. Paragraph (c) of § 552.43 revises paragraph (b) of former § 549.71. As revised, paragraph (c) now specifies that during regular working hours staff shall immediately advise the Program Coordinator of any inmate who exhibits behavior indicative of suicide, and that in emergency situations or during non-routine working hours, the potentially suicidal individual will be placed on formal suicide watch pending evaluation by the Program Coordinator, at his or her earliest opportunity. The documentation requirements in former § 549.71(b) are now covered in new § 552.43(d). New § 552.43(d) incorporates and revises paragraphs (c), (d), (e) and (f) of former § 549.71. The introductory text of new paragraph (d) provides a more general and comprehensive description of clinical interventions than former § 549.71(c). Paragraph (d)(1) of new § 552.43 specifies the determination that an inmate does not appear to be imminently suicidal shall be documented in writing along with any treatment recommendations which are made. Paragraph (d)(2) of new § 552.43 specifies that inmates appearing to have an imminent potential for suicide will be placed on suicide watch in the institution's designated suicide prevention room, and that appropriate documentation is made. The provisions of former § 549.71(e) on maintenance pertinent to imminently suicidal inmates are incorporated into new § 552.43(d)(2), and the provisions pertinent to inmates not imminently suicidal are covered by the treatment recommendations cited in new § 552.43(d) introductory text and (d)(1). As revised, new § 552.43(d) clearly emphasizes the procedure to follow for imminently suicidal inmates (i.e., placing them on suicide watch), and still allows for a variety of clinical interventions for inmates who are determined to be not imminently suicidal. The provision in former § 549.71(f) to document all efforts made on behalf of the potentially suicidal inmate is included in the documentation required by new § 552.43(d)(2), which

should also include a clear description of the resolution of the crisis.

New § 552.44 specifies where suicidal inmates will be housed, and clarifies the status of such inmates with regard to medical hospitalization. New § 552.45 designates the Program Coordinator as having responsibility for determining the specific conditions of the watch. New § 552.46 discusses suicide watches. Paragraph (a) specifies that individuals assigned to suicide watch will have verbal communication with, and constant observation of, the suicidal inmate at all times. Paragraph (b) allows the Warden the discretion to use inmates as companions to help monitor suicidal inmates. Such inmate companions shall receive performance pay for time spent monitoring a potentially suicidal inmate and shall receive training for this purpose. Former § 549.71(g) previously allowed for the use and training of such compensated inmate companions. New § 552.47 specifies the Suicide Prevention Program applies to inmates in Special Housing Unit status. New § 552.48 specifies that imminently suicidal inmates will not be transferred to another institution, except for referrals by the Program Coordinator to a Medical Center on an emergency basis. New § 552.49 requires the Program Coordinator to immediately notify the Regional Administrator, Psychology Services, in the event of an inmate suicide. This section further provides for an autopsy to be performed.

Because this amendment imposes no further restrictions on inmates and is being issued to help preserve the life of potentially suicidal inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and delay in effective date. The Bureau of Prisons is interested in receiving public comments on its rule, and is therefore publishing this document as an interim rule. Members of the public may submit comments concerning this interim rule by writing the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 549 and 552

Prisoners.

Dated: April 11, 1990.

J. Michael Quinlan,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. The authority citation for 28 CFR part 549 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§§ 549.70 and 549.71 [Redesignated as §§ 552.40–552.49]

2. In 28 CFR part 549, subpart F, consisting of §§ 549.70 through 549.71, is redesignated and revised as 28 CFR part 552, subpart E, consisting of §§ 552.40 through 552.49.

PART 552—CUSTODY

3. The authority citation for 28 CFR part 552 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In 28 CFR part 552, subpart E, consisting of §§ 552.40 through 552.49, is redesignated from 28 CFR part 549, subpart F, and revised to read as follows:

Subpart E—Suicide Prevention Program

- Sec.
- 552.40 Purpose and scope.
- 552.41 Policy.
- 552.42 Program Coordinator.
- 552.43 Procedures.
- 552.44 Housing suicidal inmates.
- 552.45 Authority and responsibility.
- 552.46 Suicide watches.
- 552.47 Custodial issues.
- 552.48 Transfer of inmates to other institutions.
- 552.49 Analysis of suicides.

Subpart E—Suicide Prevention Program

§ 552.40 Purpose and scope.

The Bureau of Prisons provides guidelines for the management of

potentially suicidal inmates. While suicides cannot be totally eliminated, the Bureau of Prisons is responsible for monitoring the health and welfare of individual inmates and for ensuring that procedures are pursued to help preserve life.

§ 552.41 Policy.

Each Bureau of Prisons institution, other than medical centers, will implement a suicide prevention program which conforms to the procedures outlined in this rule. Each Bureau of Prisons medical center is to develop specific written procedures, consistent with the specialized nature of the institution and the intent of this rule.

§ 552.42 Program coordinator.

Each Warden shall designate in writing a full-time staff member to serve as Program Coordinator for an institution Suicide Prevention Program. The Program Coordinator shall be responsible for managing the treatment of suicidal inmates and for ensuring that the institution's suicide prevention program conforms to the guidelines for training, identification, referral, and assessment/intervention outlined in this rule.

§ 552.43 Procedures.

(a) *Training.* The Program Coordinator will ensure that all staff will be trained (ordinarily by psychology services personnel) to recognize signs indicative of a potential suicide, the appropriate referral process, and suicide prevention techniques.

(b) *Identification.* All newly admitted inmates will be screened by a physician's assistant (PA) ordinarily within twenty-four hours of admission to the institution for both obvious and subtle signs of potential for suicide. Except for inmates confined at Metropolitan Correctional Centers, Federal Detention Centers or in Federal Detention Units, psychology staff will conduct a second, more comprehensive appraisal, ordinarily within 14 days of the inmate's admission to the institution.

(c) *Referral.* During regular working hours staff shall immediately advise the Program Coordinator of any inmate who exhibits behavior indicative of suicide potential. In emergency situations or during non-routine working hours, the potentially suicidal individual will be placed on formal suicide watch pending evaluation by the Program Coordinator or delegatee at his or her earliest opportunity.

(d) *Assessment/Intervention.* There are varying degrees of potential for suicidal and other deliberate self-injurious behavior which may

necessitate a variety of clinical interventions other than placing an inmate on suicide watch. These recommendations might include heightened staff or inmate interaction, a room/cell change, greater observation, or referral for psychotropic medication.

(1) *Non-suicidal inmates.* If the Program Coordinator determines that the inmate does not appear imminently suicidal, he/she shall document in writing the basis for this conclusion and any treatment recommendations made. This documentation is placed in the inmate's medical, psychology, and central file.

(2) *Suicidal inmates.* If the Program Coordinator determines the individual to have an imminent potential for suicide, the inmate will be placed on suicide watch in the institution's designated suicide prevention room. The actions and findings of the Program Coordinator will be documented, with copies going to the central file, medical record, psychology file, and the Warden. The inmate on watch will ordinarily be seen by the Program Coordinator on at least a daily basis. Unit staff will have frequent contact with the inmate while he/she is on watch. Only the Program Coordinator will have the authority to remove an inmate from suicide watch. Termination of the watch will be documented with copies to the central file, medical record, psychology file, and the Warden. There should be a clear description of the resolution of the crisis and guidelines for follow-up care.

§ 552.44 Housing suicidal inmates.

Inmates on watch will be placed in the institution's designated suicide prevention room, a non-administrative detention/segregation cell ordinarily located in the health services area. Despite the cell's location, the inmate will not be admitted as an in-patient unless there are medical indications that would necessitate immediate hospitalization.

§ 552.45 Authority and responsibility.

The Program Coordinator will have responsibility for determining the specific conditions of the watch.

§ 552.46 Suicide watches.

(a) *Requirements for watches.* Individuals assigned to suicide watch will have verbal communication with, and CONSTANT observation of, the suicidal inmate at all times.

(b) *Inmate Companions.* Any institution, at the Warden's discretion, may utilize inmates as companions to help monitor suicidal inmates. If the Warden authorizes a companion

program, the Program Coordinator will be responsible for the selection, training, assignment, and removal of individual companions. These companions will receive at least semi-annual training in program procedures and purpose. Inmates selected as companions shall receive performance pay for time spent monitoring a potentially suicidal inmate. The authorization for the use of inmate companions is to be made in writing by the Warden on a case-by-case basis.

§ 552.47 Custodial issues.

The Program Coordinator will arrange for a potentially suicidal inmate to be removed from Special Housing Unit

status prior to completion of his/her administrative detention or sanction and placed on suicide watch. Once the suicide crisis is over, the inmate will be expected to satisfy the administrative detention or Disciplinary Segregation sanction unless the Segregation Review Official finds the completion of the administrative detention or sanction no longer necessary and/or advisable.

§ 552.48 Transfer of inmates to other institutions.

The Program Coordinator will be responsible for making emergency referrals of suicidal inmates to the appropriate medical center. No inmate

who is determined to be imminently suicidal will be transferred to another institution, except to a medical center on an emergency basis.

§ 552.49 Analysis of suicides.

If an inmate suicide does occur, the Program Coordinator will immediately notify the Regional Administrator, Psychology Services, who will arrange for a psychological reconstruction of the suicide to be completed by a psychologist from another institution.

[FR Doc. 9288 Filed 4-23-90; 8:45 am]

BILLING CODE 4410-05-M

Federal Register

**Tuesday
April 24, 1990**

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 135

Ground Proximity Warning Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 135**

[Docket No. 26202; Notice No. 90-14]

RIN 2120-AD29

Ground Proximity Warning Systems**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the operating rules for air taxi and commercial operators by requiring that all turbine-powered (rather than just turbojet) airplanes with ten or more seats be equipped with an approved ground proximity warning system. The proposed changes are needed because studies have shown that several controlled flight into terrain accidents involving turbo-propeller powered airplanes might have been avoided had the airplanes been equipped with a ground proximity warning system. This proposed rule is intended to reduce the risk of airplanes being flown into terrain with no apparent awareness by the crews that they are approaching the ground.

DATES: Comments must be received on or before July 23, 1990.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), room 915G, Docket No. 26202, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked Docket No. 26202. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Akers, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9571.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice

number and be submitted in triplicate to the Rules Docket address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26202." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Beginning in the 1970's, a number of studies conducted by the National Transportation Safety Board (NTSB), the United Kingdom's Civil Aviation Authority, and independent researchers looked into accidents that were classified as "Controlled Flight Into Terrain" (CFIT). In CFIT-type accidents, an airplane under the control of a fully qualified and certificated crew is flown into terrain (or water or obstacles) with no apparent awareness on the part of the crew of an impending disaster. In general, studies have shown that a ground proximity warning system (GPWS) would be a useful warning device to prevent CFIT accidents. (For detailed information on the studies, see "Investigation of Controlled Flight Into Terrain (CFIT)", Department of Transportation, Transportation Systems Center, March 1989 (hereafter referred to as "DOT-TSC study"). A copy of this study has been placed in the Rules Docket.)

Section 121.360 (Amendment 121-114, published in December 1974, 39 FR

44439) required all part 121 and some part 135 certificate holders to install GPWS's on large turbine-powered airplanes. The GPWS requirements were further refined by amendments in 1975 and 1976. (See 40 FR 19638, 42183, 50707, 55313, and 41 FR 35070.) No requirements for small turbine-powered airplanes operating under part 135 existed until October 1978, when § 135.153 was adopted. This regulation prohibited part 135 certificate holders from operating turbojet airplanes with 10 or more seats unless the airplanes were equipped with either GPWS's that met specific TSO requirements or alternative ground proximity advisory systems approved by the Director, Flight Standards Service.

The term "GPWS," as used in this document, means a warning system that could meet TSO-C92b or subsequent TSO's issued for GPWS. This is the type of system that operates only when there is an imminent potential hazard. The terms "ground proximity advisory system" and "advisory system" are used to refer to the type of alternative system authorized under present § 135.153(b), and refers to systems that usually provide routine altitude callouts, whether or not there is any imminent danger.

In 1978, the requirement for installing GPWS's or alternative ground proximity advisory systems in small turbojet airplanes operating under part 135 was considered necessary because of the complexity, size, speed, and flight performance characteristics of these airplanes. GPWS's or alternative approved advisory systems were therefore considered an essential element in helping the pilots of these planes to regain altitude quickly and avoid what could have been a CFIT-type accident.

Installation of GPWS's or alternate approved advisory systems was not originally required on turbo-propeller powered (turboprop) airplanes because, at the time, it was believed that the performance characteristics of turboprop airplanes made them less susceptible to CFIT accidents. Turboprop airplanes have a greater ability to respond quickly in situations where altitude control is inadvertently neglected, as compared to turbojet airplanes.

A 1981 study found that the use of GPWS's contributed to the prevention of CFIT accidents. (R. Porter and J. Loomis, "An Investigation of Reports of Controlled Flight Toward Terrain (CFIT).") The study reviewed CFIT-type incident reports from 1976-1980 and found that GPWS's and Minimum Safe

Altitude Warning (MSAW) equipment were "the initial recovery factor in some 18 serious incidents and were apparently the sole warning in 6 reported instances which otherwise would most probably have ended in disaster."

In October 1986, the NTSB published a study investigating the causes of three commuter air carrier accidents. One element explored in the study was the use of ground proximity warning devices. The NTSB pointed out that between 1975 and 1978, after FAA had required GPWS's for large turbine-powered airplanes operated under part 121, CFIT accidents decreased by 75 percent for part 121 operations.

The NTSB stated that it was "convinced that each of these (three) accidents could have been prevented if the flightcrew had been alerted to their proximity to the ground in sufficient time to have initiated missed approach procedures." The study went on to say that although the number of turboprop airplanes used for commuter purposes was increasing, thereby affecting a larger number of passengers, there was no regulation requiring that these airplanes be equipped with ground proximity warning systems or devices. The NTSB therefore recommended the following:

Amend 14 CFR 135.153 to require after a specified date the installation and use of ground proximity warning devices in all multiengine, turbine-powered fixed wing airplanes, certificated to carry 10 or more passengers.

In its report the NTSB stated that it "realizes that a full GPWS, such as those installed in large turbojet airplanes, may be prohibitively expensive to retrofit into part 135 type airplanes."

At the request of the FAA, an investigation into CFIT accidents involving turbine-powered airplanes operating under part 135 was conducted by the Department of Transportation-Transportation Systems Center [DOT-TSC]. The investigation, which was undertaken in response to the above NTSB recommendation, studied data from 41 CFIT accidents occurring between 1970 and 1988. Of the 41 accidents, complete accident investigation records were available for the 27 that occurred after 1977. These records showed that it was highly improbable that any of the pilots operating these airplanes received warning that impact was about to occur. Complete results of this investigation are contained in the DOT-TSC study.

Analysis of the accident investigation records reviewed in the DOT-TSC study

support the following conclusions: (1) A GPWS warning would not have been activated in four of the accidents; (2) a GPWS warning would have been activated but with questionable recovery in five of the accidents; and (3) a GPWS warning might have been activated with likely or probable recovery in 18 of the accidents. Thus, 66 percent of these accidents might have been avoided if the airplanes had GPWS's.

Besides pointing out the potential effectiveness of GPWS's, the DOT-TSC investigation presented data on the types of airplanes involved in all 41 accidents studied. Thirty-five of these accidents involved turboprop airplanes and six involved turbojet airplanes.

The DOT-TSC study evaluated a ground proximity warning system that would meet TSO-C92b and also evaluated two alternative ground proximity advisory systems of the type that could be approved under the present rule. This study found that in certain situations each of these systems provided essentially functionally-equivalent protection. The study pointed out that the three systems provide very different approaches to providing altitude awareness to the flight crew. The advisory systems use automatic altitude callouts which will always activate when the aircraft descends below 1,000 feet above ground level (AGL). On the other hand, a GPWS is designed to do the following:

1. Alert or warn only when necessary.
2. Provide maximum warning time while minimizing unwanted alarms.
3. Use command-type warnings.

This system is the only one of the three that can be called a ground proximity warning system (GPWS) and the only one that can meet applicable minimum performance standards for obtaining TSO design approval. The other two systems are accurately referred to as ground proximity advisory systems.

The DOT-TSC study found that in the most critical operational situation (excessive closure rate with terrain) there were significant performance differences between the TSO-approved GPWS and the alternative ground proximity advisory systems.

The DOT-TSC study also compared recent cost data on the three systems analyzed and found them to be comparable in their unit costs. That is, a full TSO-approved ground proximity warning system is no longer significantly more costly than the alternative advisory systems (\$20K for GPWS versus \$15K to \$19K for advisory systems). This fact is highly significant since as recently as 1986, the cost of a

full TSO-approved GPWS for smaller turbo-propeller powered airplanes would have been prohibitively expensive as the NTSB noted in its recommendation.

In view of the above cited studies and investigations and the FAA's past policy to increase ground proximity warning requirements consistent with technological and economic feasibility, it is appropriate to require ground proximity warning systems for all turbine-powered airplanes with 10 or more seats operating under part 135. The number of turbine-powered airplanes having a passenger configuration of 10 seats or more in operation today, as compared to 1978, has increased significantly. The traveling public today expects the same level of safety when required to transfer from a large air carrier airplane to a smaller turboprop airplane for travel to and from hub airports.

The Proposed Rule

Section 135.153 would be amended by changing the term "turbojet" to "turbine-powered" airplanes. This would expand the types of airplanes required to have ground proximity warning systems. Thus, both turbojet and turbo-propeller powered airplanes having a passenger configuration, excluding any pilot seat, of 10 seats or more would be required to have an approved GPWS. Equipment manufactured under TSO-C92b or subsequent TSO's issued for GPWS are considered approved GPWS.

As proposed, this amendment to § 135.153 would end on the rule's effective date the current option to install an FAA-approved ground proximity advisory system on turbojet airplanes. Certificate holders operating under part 135 with turbine-powered airplanes currently lacking ground proximity warning systems would be required to equip these airplanes with GPWS's within two years after the effective date of the rule. Certificate holders that operate turbojet airplanes with advisory systems that were approved and installed in accordance with § 135.153(b) before the effective date of the rule would be required to replace those systems within four years after the effective date. The FAA believes that only a few airplanes would be affected by this retrofit requirement since far fewer turbojet airplanes with 10 or more passenger seats are in operation under part 135 than were anticipated when § 135.153 was adopted.

The provisions of existing § 135.153(f) are included in proposed § 135.153(b)(3) for editorial purposes.

The justification for requiring GPWS's (as opposed to alternative advisory systems) on turbine-powered airplanes that have no existing warning systems is that the advisory systems generally provide routine warnings (i.e., automatic altitude callouts), rather than warnings that are provided only upon violation of defined flight profiles. Routine warnings may be easily overlooked by the flight crew as they attend to other duties. This, coupled with findings of some of the CFIT-related studies that show a lack of crew adherence to standard cockpit procedures and the incidence of crew stress and fatigue, could reduce effectiveness of the alternative advisory systems. GPWS's provide warning signals that are clear, specific, and non-routine, thereby giving the crew a better chance of making readjustments and avoiding possible disaster.

In addition, the costs of GPWS's are in the same range as the alternative advisory systems, therefore imposing little additional burden in terms of cost outlay for new installations.

Regulatory Evaluation

This regulatory evaluation analyzes the benefits and costs of the proposal. A more detailed analysis has been placed in the docket.

The proposed regulation would amend part 135 by expanding the requirement for GPWS's, now applicable only to turbojet airplanes with 10 or more passenger seats, to also include turboprop airplanes of similar seating capacity. This amendment would also require that only GPWS's, and not ground proximity "advisory" systems, be installed on airplanes that currently have no such system. However, airplanes that have previously approved advisory systems that were installed before the effective date would need to upgrade or replace these systems with a GPWS within 4 years from the effective date of the final rule.

Costs

At this time, only one avionics manufacturer plans to produce a GPWS that will meet the current FAA Technical Standard Order (TSO) for use in multiengine, fixed-wing, turbine-powered aircraft operating under part 135. The manufacturer provided FAA with its anticipated unit costs, as well as specification information about the warning system. Costs included \$12,000 for equipment, \$600 for wiring, connectors, etc., and \$2,000 for installation. Annual maintenance costs were estimated to be 5 percent of equipment costs, or about \$6,000 over 10 years (see *Investigation of Controlled Flight Into Terrain (CFIT)*, Department

of Transportation—Transportation Systems Center [DOT-TSC] March 1989).

In addition, the manufacturer provided cost data for suitable radio altimeters that must accompany the GPWS. The estimated cost per installation would be \$7,000, reflecting a \$5,000 cost for the radio altimeter and \$2,000 for installation.

As of December 1987, 695 part 135 turboprop airplanes were reported in operation (FAA *Statistical Handbook of Aviation—Calendar Year 1987*, Department of Transportation, FAA). A small percentage of these airplanes may already be equipped with an approved GPWS. For the purposes of this evaluation, FAA assumes that all 695 of these airplanes would be required to comply with the proposed regulation and would need to be equipped with a GPWS. Costs for equipment, materials, and installation for the GPWS, as reported by the manufacturer, total \$14,600. Thus, the total estimated costs to purchase and install GPWS's would be \$10.1 million ($\$14,600 \times 695$).

Approximately 4 percent of the 695 airplanes operating under part 135, such as those operating in air taxi service, do not have 10 or more seats, and thus would not be affected by the proposed rule (according to the *Census of U.S. Civil Aircraft—1985*, Department of Transportation, FAA). Therefore, estimated costs are overstated to a small degree.

Not all of the 695 turboprop airplanes operating under part 135 would need to install radio altimeters. The DOT-TSC study determined that 38.8 percent of the airplanes that would be affected by this proposal currently have satisfactory radio altimeters on board. Thus, FAA estimates that 425 airplanes would be required to install these devices. At \$7,000 each, the total cost to purchase and install radio altimeters is nearly \$3 million. The total fleet cost for radio altimeters and GPWS is \$13.1 million ($\$3 \text{ million} + \10.1 million). These costs would be incurred almost immediately after the rule becomes effective.

Maintenance costs were estimated to be \$600 per year over the 10-year life of the warning system. The total estimated 10-year cost to the fleet for maintenance is \$4.2 million ($695 \text{ airplanes} \times \$600 \times 10 \text{ years}$) which, when discounted at 10 percent annually over the 10-year life, is \$2.7 million.

Each additional pound of weight added to part 135 turboprop aircraft is estimated to result in 8.55 gallons of annual fuel consumption to fly the additional weight. Because jet fuel currently costs \$1.68 per gallon for part 135 commuters, the annual cost per

pound of additional weight is about \$14.36. The total additional weight per aircraft associated with the GPWS, altimeter, and wiring is estimated to be 4 pounds. Therefore, total annual weight penalty costs are estimated to be \$57.44 and \$39,921 per aircraft and fleet, respectively. Total discounted 10-year costs are expected to be \$261.165.

Therefore, fleet costs of the proposed rule include \$13.1 million in implementation costs, \$2.7 million for maintenance costs, and \$0.26 million in weight penalty costs, for a total of \$16.06 million.

Benefits

Twenty-seven accidents occurred in the 10-year period between 1978 and 1987 in which NTSB accident investigations revealed that it was highly improbable that the flight crew had any prior awareness of an impending impact with terrain. None of the airplanes involved in these accidents were equipped with a GPWS, and only one was equipped with an advisory system. The March 1989 DOT-TSC study of CFITs scrutinized the circumstances of each of these accidents. The study determined that four of the accidents most likely would not have been prevented if a GPWS had been on board. In five other accidents the airplanes involved would have received a GPWS alert, but with questionable time provided for recovery, if such a system had been on board. The other 18 accidents involved airplanes that would have had a GPWS alert activated with sufficient time for recovery, if one had been in use at the time. The casualties in the 18 accidents that the study considered preventable with the use of a GPWS included 56 fatalities and 7 serious injuries.

The FAA assumes for the purpose of this analysis that similar casualties can be expected in the future if GPWS's are not installed on multiengine, fixed-wing, turboprop aircraft operating under part 135. For the purpose of quantifying benefits of this proposal, a minimum value of \$1M is used to statistically represent a human life, and \$59,000 is used to statistically represent a serious injury. In addition, the DOT-TSC study determined that the value of the average dollar loss for each of the 10 aircraft destroyed and the 6 aircraft substantially damaged was \$550,000 and \$180,000, respectively. Applying these values against the estimated potential losses provides an estimate of the total benefit of the proposal over a 10-year period. The savings in human casualties total \$56.4 million ($56 \times \$1 \text{ million} + 7 \times \$59,000$). The savings in destroyed

and substantially damaged airplanes total \$6.6 million ($10 \times \$550,000 + 6 \times \$180,000$). Total benefits amount to \$63 million, or \$40.7 million when discounted at 10 percent over the 10-year period.

Comparison of Benefits and Costs

The potential benefits of this proposal (\$40.7 million over 10 years) far exceed the estimated costs (\$16.06 million over 10 years). Unfortunately, there is no way to know how many accidents and deaths will actually be prevented if this proposal is adopted. However, it is clear that if this proposed regulation succeeds in preventing only 40 percent of the accidents predicted in this analysis, it will prove to be cost-beneficial.

International Trade Impact

The proposal, if adopted, would have little or no impact on trade for U.S. firms doing business overseas or foreign firms doing business in the U.S. The proposal affects only part 135 airplanes of U.S. registry, and the expected additional annual operating cost of \$2,311 (present value) per airplane (\$16.06 million for 695 aircraft over a 10-year period) should not create an economic disadvantage to either domestic operators or foreign carriers operating in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The proposal would have an economic impact on entities regulated by part 135. The FAA's criteria for a "substantial number" is a number which is not less than 11 and which is more than one third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine aircraft or less. The FAA's criteria for a "significant impact" is at least \$3,700 per year for an unscheduled carrier, and \$51,800 or \$97,700 per year for a scheduled carrier depending on whether or not the fleet operated includes small airplanes (60 or fewer seats).

A carrier qualifying as an unscheduled small entity with at least two airplanes would incur a significant economic impact because the annual cost of \$4,622 for two airplanes exceeds the \$3,700 criteria used by the FAA. Such carriers represent approximately 37 percent of all small entities subject to

the rule. Therefore, as required by law, an initial regulatory flexibility analysis follows.

Initial Regulatory Flexibility Analysis

As required by section 603(b) and (c) of the Regulatory Flexibility Act, the following analysis deals with the proposed rule as it relates to small entities.

Why Agency Action Is Taken

The reasons for agency action are detailed in the preamble of the NPRM. Briefly, the proposal would improve safety by reducing controlled flight into terrain accidents involving turbo-propeller powered airplanes. The proposal addresses an NTSB recommendation and is supported by studies that suggest that installation of a ground proximity warning system would contribute to prevention of CFIT accidents.

Objective of and Legal Basis for the Rule

The objective of the proposal is to improve the operating safety of part 135 aircraft by preventing controlled flights into terrain. The objective is more thoroughly discussed in the preamble of the NPRM. The legal basis of the proposal is sections 313, 314, and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430) and the Department of Transportation Act (49 U.S.C. 106(g)).

Description of the Small Entities Affected by the Rule

The small entities affected by the rule would be unscheduled carriers operating under part 135 of the Federal Aviation Regulations that have more than one aircraft, but less than nine. Such aircraft have 10 or more seats.

Compliance Requirement of the Proposed Rule

Compliance with the proposed rule would be mandatory for all operators of turbine-powered, multiengine, fixed-wing aircraft with 10 or more passenger seats that operate under part 135. Operators of turbojet aircraft that are currently using alternative warning systems approved by the FAA would be required to replace those systems within 4 years of the effective date of the rule.

Alternatives to the Proposal

As part of the rulemaking action, the FAA considered several alternative approaches to the problem addressed by this proposal.

Alternative One

Let the market decide. This alternative would allow the public to select an airline based on competitive factors including those of a safety nature. The airline would be free to choose whether it should install GPWS's as recommended. This is an alternative applicable to all safety regulations. In the view of the FAA, this alternative would not assure a safe U.S. air transportation system.

Alternative Two

Delay development of the proposal pending additional information which could be obtained during further government and industry reviews. This alternative is tentatively rejected. The current proposal is supported by adequate investigations and studies. Publication of the proposal in the *Federal Register* and solicitation of comments is the most effective method of developing a sound amendment.

Alternative Three

Reduce costs to the industry by reducing the safety requirements. Permit implementation of a warning system that has fewer than the five defined modes of protection provided in a "full-scale" GPWS. The FAA rejects this alternative because implementation of fewer than the full complement of five warning envelopes, as shown in the DOT-TSC study, would create only minimal cost savings. However, some of the benefits of the system would be lost.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

This proposal is significant under Department of Transportation Policies and Procedures (44 FR 11034, February 26, 1979) and, if adopted, the FAA certifies that it may have a significant negative economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The annual cost that would be imposed on part 135 operators to install a ground proximity warning system on turboprop airplanes would exceed \$3,700 per year for unscheduled

air carriers. The FAA has determined that this notice involves a rulemaking action that is not a major rule under Executive Order 12291. An initial regulatory evaluation of the proposal, including an Initial Regulatory Flexibility Analysis and International Trade Impact Analysis has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 135

Ground proximity warning systems.

The Proposed Amendment

The Federal Aviation Administration proposes to amend part 135 of the Federal Aviation Regulations [14 CFR part 135] as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 135.153 is revised to read as follows:

§ 135.153 Ground proximity warning system.

(a) Except as provided in paragraph (b) of this section, after a date 2 years after effective date of this amendment, no person may operate a turbine-powered airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, unless it is equipped with an approved ground proximity warning system.

(b) Any airplane equipped before (insert effective date) with an alternative system that conveys warnings of excessive closure rates with the terrain and any deviations below glide slope by visual and audible means may continue to be operated with that system until (insert date four years after effective date) provided that—

- (1) The system must have been approved by the Administrator;
- (2) The system must have a means of alerting the pilot when a malfunction occurs in the system; and
- (3) Procedures must have been established by the certificate holder to

ensure that the performance of the system can be appropriately monitored.

(c) For a system required by this section, the Airplane Flight Manual shall contain—

- (1) Appropriate procedures for—
 - (i) The use of the equipment;
 - (ii) Proper flight crew action with respect to the equipment; and
 - (iii) Deactivation for planned abnormal and emergency conditions; and
- (2) An outline of all input sources that must be operating.
- (d) No person may deactivate a system required by this section except under procedures in the Airplane Flight Manual.
- (e) Whenever a system required by this section is deactivated, an entry shall be made in the airplane maintenance record that includes the date and time of deactivation.

Issued in Washington, DC, on April 11, 1990.

Thomas E. McSweeney,
Acting Director, Aircraft Certification
Service.

[FR Doc. 90-9322 Filed 4-23-90; 8:45 am]

BILLING CODE 4910-13-M

Registered Federal Reporter

Tuesday,
April 24, 1990

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals

**OFFICE OF MANAGEMENT AND
BUDGET****Budget Rescissions and Deferrals**

To The Congress of the United States:
In accordance with the Impoundment
Control Act of 1974, I herewith report
three revised deferrals of budget
authority now totalling \$2,097,533,159.

The deferrals affect programs in
Funds Appropriated to the President and
the Departments of Defense and Health
and Human Services. The details of the
deferrals are contained in the attached
report.

Dated: April 18, 1990.

George Bush,

THE WHITE HOUSE.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

<u>DEFERRAL NO.</u>	<u>ITEM</u>	<u>BUDGET AUTHORITY</u>
	Funds Appropriated to the President:	
	International Security Assistance:	
D90-1B	Economic support fund.....	2,088,909
	Department of Defense, Civil:	
D90-4A	Wildlife conservation.....	1,497
	Department of Health and Human Services:	
	Social Security Administration:	
D90-5A	Limitation on administrative expenses (construction).....	7,127
	Total, deferrals.....	2,097,533

SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1990
(in thousands of dollars)

	<u>RESCISSIONS</u>	<u>DEFERRALS</u>
Fourth special message:		
New items.....	—	—
Revisions to previous special messages.....	—	20,329
Effects of the fourth special message.....	—	20,329
Amounts from previous special messages....	—	10,642,260*
TOTAL amount proposed to date in all special messages.....	—	10,662,589*

-
- * On March 28, 1990, the Director of the Office of Management and Budget informed the Congressional Committees on Appropriations that the Administration no longer intends to withhold \$2,193,850,000 in Department of Defense deferrals. These funds are currently being released.

Deferral No. D90-1B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D90-1A transmitted to Congress on January 29, 1990.

This revision increases by \$19,830,727 the previous deferral of \$2,069,078,500 in the Economic support fund, resulting in a total deferral of \$2,088,909,227. The increase results from more unobligated funds carried over from FY 1989 than previously anticipated.

Deferral No. 90-1B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... * \$ <u>3,226,132,500</u> (P.L. 101-167)
BUREAU: International Security Assistance	Other budgetary resources..... * <u>242,885,375</u>
Appropriation title and symbol: Economic support fund 1/ 119/01037 1101037 11X1037 110/11037	Total budgetary resources..... * <u>3,469,017,875</u>
	Amount to be deferred: Part of year..... * \$ <u>2,088,909,227</u> Entire year..... _____
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Type of account or fund: <input checked="" type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: *September 30, 1990 September 30, 1991 (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11x1037	11-1037-0-1-152	* \$ 20,830,727
Economic support fund.....	119/01037	11-1037-0-1-152	270,000,000
Economic support fund.....	110/11037	11-1037-0-1-152	<u>1,798,078,500</u>
			* 2,088,909,227

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ These accounts were the subject of a similar deferral in 1989 (D89-1A).

* Revised from previous report.

Deferral No. D90-4A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D90-4 transmitted to Congress on October 2, 1989.

This revision to a deferral of the Department of Defense - Civil, Wildlife conservation account increases the amount previously reported from \$1,047,000 to \$1,497,114. This increase of \$450,114 results from the deferral of unanticipated actual balances carried over from FY 1989 and increased FY 1990 receipts.

Deferral No. <input checked="" type="checkbox"/> D90-4A Other <input type="checkbox"/>		Date Reported <input type="checkbox"/> 10/2/89 Date Revised <input checked="" type="checkbox"/> 4/24/90	
Type of Budget Authority Appropriation <input checked="" type="checkbox"/> Contract Authority <input type="checkbox"/> Other <input type="checkbox"/>		Type of Account or Fund Army <input type="checkbox"/> Navy <input type="checkbox"/> Air Force <input checked="" type="checkbox"/>	

Appropriation	Account Symbol	OMB Identification Code	Deferral Amount
Wildlife Conservation Army	21X000	21-2000-0-2-000	\$ 698,400
Wildlife Conservation Navy	17X000	17-2000-0-2-000	172,100
Wildlife Conservation Air Force	27X000	27-2000-0-2-000	626,614
			<u>\$1,497,114</u>

EXPLANATION: This deferral is a continuation of the deferral of unanticipated actual balances carried over from FY 1989 and increased FY 1990 receipts. The deferral is for the purpose of the law - to carry out a program of natural resource conservation. The deferral is for the purpose of the law - to carry out a program of natural resource conservation. The deferral is for the purpose of the law - to carry out a program of natural resource conservation.

If these accounts were the subject of a similar deferral in 1989 (D90-2A),

the amount from previous report

Deferral No. 90-4A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil	New budget authority..... *\$ 2,098,000 (16 U.S.C. 670f)
BUREAU: Wildlife Conservation Military Reservations 1/	Other budgetary resources..... *\$ 1,871,735
Appropriation title and symbol: Wildlife Conservation, Army 21X5095 Wildlife Conservation, Navy 17X5095 Wildlife Conservation, Air Force 57X5095	Total budgetary resources..... *\$ 3,969,735
OMB identification code: 97-5095-0-2-303	Amount to be deferred: Part of year..... Entire year..... *\$ 1,497,114
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	*\$ 986,465
Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	* 172,168
Wildlife Conservation, Air Force....	57X5095	57-5095-0-2-303	* 338,481
			* 1,497,114

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation.

These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in 1989 (D89-5A).

* Revised from previous report.

D90-4A

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. D90-5A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D90-5 transmitted to Congress on October 2, 1989.

This revision to a deferral of the Department of Health and Human Services, Social Security Administration's Limitation on Administrative Expenses (Construction) account increases the amount previously reported from \$7,078,261 to \$7,126,818. This increase of \$48,557 results from more unobligated funds carried over from FY 1989 than previously anticipated.

Deferral No. 90-5A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority
BUREAU: Social Security Administration	Other budgetary resources * \$ <u>7,505,018</u>
Appropriation title and symbol: Limitation on administrative expenses (construction) 1/ 75X8704	Total budgetary resources * \$ <u>7,505,018</u>
	Amount to be deferred: Part of year
	Entire year * \$ <u>7,126,818</u>
OMB identification code: 20-8007-0-6-651	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year: _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office replacement projects. It has been determined that obligation authority in the amount of this deferral is not needed at the present time. Some additional obligations will occur in fiscal year 1991 for roof repair and replacement. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1989 (D89-7A).

* Revised from previous report.

Federal Register

Tuesday
April 24, 1990

Part V

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical
Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50575; FRL-3658-5]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are now subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating these SNURs using direct final procedures.

EFFECTIVE DATE: The effective date of this rule is June 25, 1990.

Comment. If EPA receives notice before May 24, 1990 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for each substance for which the notice of intent to comment is received, and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comments must bear the docket control number [OPTS-50575] and the specific CFR section number for the substance being addressed. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460, Attn: Significant New Use Rules.

Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit X of this

preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule describes significant new uses and recordkeeping requirements for certain persons who intend to manufacture, import, or process certain chemical substances designated in the rule. Each of the following substances designated in today's rule was the subject of a PMN and a TSCA section 5(e) consent order issued by EPA. The substances are identified by generic chemical names because the specific names have been claimed as CBI (see Unit VII).

PMN Number	Chemical Name
P-89-448	(generic) Alkanepolyol phosphate ester
P-89-650	(generic) Substituted ethylene diamine, methyl sulfate quaternized
P-89-653	(generic) Adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomono-cyclic dicarboxylic acid
P-89-703, P-89-755, and P-89-756	(generic) Reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid

This is the first rule EPA has issued using the expedited procedures and standard significant new use designations established in EPA's recent amendments to 40 CFR part 721. (See 54 FR 31308, July 27, 1989.) The preamble to this rule explains in detail the background and rationale supporting the use of the new expedited process. Where appropriate, future rules issued using the expedited process will contain an abbreviated version of this background information but will cross-reference the more complete explanation in the preamble of this rule.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires

persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 720.10.

II. Objectives and Rationale for Expedited SNUR Process

A. PMN Review and Use of Section 5(e) Orders

A limited amount of toxicity data is typically submitted with PMNs. Thus EPA bases its review of new substances primarily on structure-activity relationships (SAR). During PMN review, EPA may determine that "the information available* * * is insufficient to permit a reasoned evaluation of the health and environmental effects" of the new chemical substance that is the subject of the PMN. At the same time, EPA may determine, under section 5(e)(1)(A)(ii)(I), based on SAR analysis that activities involving the new substance "may present an unreasonable risk of injury to health or the environment." When EPA makes these two findings, it acts under section 5(e) to regulate the activities involving the new substance which contribute to the potential risk.

In most such circumstances, EPA believes that it is appropriate to negotiate an order (known as a "consent order") under section 5(e) with the PMN submitter to control human exposure and/or environmental releases until test data or other information sufficient to assess adequately the potential hazard become available. Section 5(e) consent orders have specified a variety of control measures, including protective equipment, use limitations, process restrictions, labeling requirements, and limits on environmental release. Some recent consent orders have included testing requirements that are triggered when specified levels of production volume or other indices of increased exposure are reached; under these orders, the submitter may not exceed the production volume limitation or other restriction imposed by EPA until test data specified by EPA have been submitted to and reviewed by EPA.

In other instances, during PMN review EPA may determine under section 5(e)(1)(A)(ii)(II) that a new substance will be produced in substantial quantities and "may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance," and that the available information is insufficient to determine the effects of the substance.

Consent orders issued to address concerns under section 5(e)(1)(A)(ii)(II) may include recordkeeping provisions and production volume limits.

B. Use of SNURS as a Follow-Up Tool for Substances Subject to Section 5(e) Consent Orders

Section 5(e) orders apply only to PMN submitters. When a PMN submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture to EPA, EPA adds the substance to the TSCA Chemical Substance Inventory maintained pursuant to section 8(b) of TSCA. When a substance is listed on the Inventory, it is no longer a "new chemical substance" for which a PMN would be required under section 5(a)(1)(A). Thus, under section 5(e) alone other persons would be able to manufacture, import, or process the substance without EPA review and without the restrictions imposed on the PMN submitter by the section 5(e) order.

EPA uses its SNUR authority to extend limitations in section 5(e) orders to other manufacturers, importers, and processors. This ensures that the original PMN submitters and subsequent manufacturers, importers, and processors are treated in an essentially equivalent manner. These SNURs are framed so that non-compliance with the control measures or other restrictions in the section 5(e) consent orders is defined as a "significant new use." Thus, other manufacturers, importers, and processors of the substances must either observe the SNUR restrictions or submit a significant new use notice to EPA at least 90 days before initiating activities that deviate from these restrictions. After receiving and reviewing such a notice, EPA has the option of either permitting the new use or acting under section 5(e) or (f) to regulate the new submitter's activities.

In addition to assuring that all manufacturers, importers, and processors are subject to similar reporting requirements and restrictions, SNURs for these substances have the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a chemical substance listed on the TSCA Inventory for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; and that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or

processors of a listed chemical substance before a significant new use of that substance occurs.

C. Substances That May Raise Concerns But Are Not Regulated Under Section 5(e) -

EPA also reviews some new substances that do not warrant action under section 5(e) but merit other follow-up monitoring and evaluation. On the basis of test data or structure-activity relationships analysis, EPA may identify potential health or environmental effects that could create a basis for concern if, because of changes in use and related activities, the substance's exposure or release potential later changes or increases beyond that described in the PMN.

In most such cases, EPA believes it is appropriate to use SNUR authority to monitor the commercial development of these substances so that EPA can be apprised of significant increases in exposure potential, which may warrant control measures or testing.

D. Rationale for Significant New Use Designations

To determine what constitutes significant new uses, EPA considers relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. EPA designates the significant new uses of each substance based on these considerations.

In cases where significant new use designations are based on provisions in the section 5(e) order, EPA has already made a determination either under section 5(e)(1)(A)(ii)(I) (i.e., that activities involving the substance may present an unreasonable risk of injury to health or the environment), or under section 5(e)(1)(A)(ii)(II) (i.e., that the substance may be produced in substantial quantities and may enter the environment in substantial quantities or there may be significant or substantial human exposure). While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the uses of the substance designated in the rule would be significant new uses of the substance. In this and future SNURs, for each substance subject to a section 5(e) order, EPA will specify the findings that served as the basis of the order.

For substances not subject to a section 5(e) order or when EPA believes that SNUR requirements should include provisions which did not appear in a section 5(e) order, the additional provisions will conform to the criteria in

40 CFR 721.170, and the basis for these additional provisions will be explained.

E. Conversion of Section 5(e) Orders Into SNURs

The standard significant new use designations in subparts B and C of 40 CFR part 721 are designed to be consistent with standard provisions for section 5(e) consent orders. Because section 5(e) orders are framed to apply only to PMN submitters, however, minor wording changes may be needed to convert the orders' provisions into generally applicable requirements. Under § 721.160(b), EPA may make such wording changes provided that they do not depart from the section 5(e) order's substantive requirements. All of the SNURs in today's rule are based on recently issued section 5(e) orders, and only minor wording changes are necessary to convert the requirements into SNURs.

Some earlier section 5(e) orders contain provisions that require major wording changes to be converted into SNURs. Where a particular requirement in a section 5(e) order is worded so differently from the corresponding SNUR provision that the basis for selecting the SNUR provision would not otherwise be evident, EPA will provide an explanation for its choice of SNUR provisions.

III. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and conditions of advance compliance for uses occurring before the effective date of the final rule. See 53 FR 28358 (July 27, 1988).

EPA has recently amended 40 CFR part 721 by establishing new subparts B, C, and D. See 54 FR 31306 (July 27, 1989). Subpart B establishes standard significant new use designations. Subpart C establishes recordkeeping requirements. Each standard significant new use and recordkeeping requirement will apply to a specific substance only if it is cited in the SNUR for that substance. Subpart D contains expedited procedures for establishing significant new use requirements for certain new substances that are regulated under a section 5(e) consent order. Subpart D also contains criteria to determine whether uses not identified in the PMN of non-section 5(e) substances will be considered candidates for a SNUR under expedited procedures. SNURs for specific substances are contained in subpart E.

Rules on user fees appear at 40 CFR part 700.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the rules in 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the *Federal Register* its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The rules that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

IV. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if applicable), basis for the action taken by EPA in the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this Unit. As explained further in Unit VI, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who

intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Each of these SNURs regulates a chemical substance subject to a section 5(e) order where the finding under TSCA is based solely on substantial production volume and substantial human or environmental exposure. In each of these cases, there was limited or no toxicity data available for the PMN substance, a potentially substantial production volume, and a potentially substantial human or environmental exposure. In such cases, EPA regulates new chemicals under section 5(e) by requiring certain toxicity tests. For instance chemicals with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

Each of these SNURs involves information which has been claimed as CBI. When a generic chemical name appears in this Unit, the specific name is claimed as CBI. In addition, each of the SNURs identified in this Unit involves a production limit as a significant new use. Because the production volume limit is contained in the section 5(e) order and has been claimed as CBI, the regulatory text incorporates the production volume by reference to the section 5(e) order. The procedures for determining whether a specific substance and/or a specific significant new use which are CBI are covered by a specific SNUR are described in Unit VII.

PMN Number P-89-448

Chemical name: (generic) Alkanepolyol phosphate ester.

CAS number: Not applicable.

Effective date of section 5(e) consent order: October 12, 1989.

Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.

Recommended testing: EPA has determined that the results of a mouse micronucleus assay (40 CFR 798.5395) and a 28-day repeated dose oral study

in rats (OECD Guideline No. 407), with the following modifications: (a) for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.

CFR citation: 40 CFR 721.288.

PMN Number P-89-650

Chemical name: (generic) Substituted ethylene diamine, methyl sulfate quaternized.

CAS number: Not applicable.

Effective date of section 5(e) consent order: October 23, 1989.

Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental releases and significant or substantial human exposure.

Recommended testing: EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.

CFR citation: 40 CFR 721.1082.

PMN Number P-89-653

Chemical name: (generic) Adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid.

CAS number: Not applicable.

Effective date of section 5(e) consent order: October 31, 1989.

Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.

Recommended testing: EPA has determined that the results of 28-day oral (OECD 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has

agreed not to exceed the production volume limit without performing these tests.

CFR citation: 40 CFR 721.266.

PMN Numbers P-89-703, P-89-755, and P-89-756

Chemical name: (generic) Reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid.

CAS numbers: Not applicable.

Effective date of section 5(e) consent order: October 12, 1989.

Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that each of these substances is expected to be produced in substantial quantities and there may be significant or substantial human exposure.

Recommended testing: EPA has determined that the results of a 28-day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400), and a one-species oral developmental toxicity test (40 CFR 798.4900) for each of these three substances would help characterize their possible effects. The PMN submitter has agreed not to exceed the production volume limits without performing these tests.

CFR citation: 40 CFR 721.295.

V. Direct Final Rule Procedure

EPA is issuing today's SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). This approach reduces the time, relative to notice and comment rulemaking, during which a person may legally engage in a significant new use before the SNUR effective date and also conserves EPA resources while providing an adequate opportunity for public comment. For further information on this procedure, refer to the preamble to EPA's final rule amending part 721 (54 FR 31298, July 27, 1989).

Direct final SNURs will go into effect 60 days after the date of publication in the *Federal Register*, unless EPA receives a written notice within 30 days after the date of publication that someone wishes to make adverse or critical comments on a specific SNUR. If EPA receives such a notice, EPA will issue a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. Any person

who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice. If EPA receives such a notice, EPA will then propose a SNUR for the specific substance(s) with a 30-day comment period.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submitting a SNUR notice. Persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, EPA suggests potential SNUR notice submitters consider conducting tests that would permit a reasoned evaluation of the potential risks posed by a particular substance when utilized for an intended use.

EPA has established production limits in the section 5(e) consent orders for the substances that are subject to this rule. Under the consent orders, the production limit cannot be exceeded unless the PMN submitters first submit the results of tests that would permit a reasoned evaluation of the potential risks posed by these substances. Each such order contains detailed procedures for dealing with situations where the resulting data are invalid or equivocal, or show that the substance will present an unreasonable risk of injury under the exposure limitations in the order. SNURs contain the same production limits as the consent orders; exceeding these production limits is defined as a significant new use.

Although SNURs in today's rule contain the same production limits established in the section 5(e) consent orders, the rule does not set out requirements for specific tests or protocols. A listing of the tests specified in the section 5(e) order for each substance subject to today's rule is included in Unit IV. The studies specified in the section 5(e) order may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter.

EPA believes it is likely that in most cases the PMN submitter will conduct the tests identified in the section 5(e) order. Accordingly, before beginning to conduct a study, a person subject to the SNUR should contact EPA to determine

whether the study has already been produced. EPA encourages persons to consult with EPA before selecting a protocol for testing a substance. As part of this pre-notice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA good laboratory practice standards at 40 CFR part 792. Failure to do so may lead EPA to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Determining When a Substance or Use Is Designated in the Rule

In some instances, EPA establishes a significant new use set at production volumes which have been claimed as CBI. Other information, including the specific chemical name of the substance, may also be claimed CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitters.

EPA will reveal whether a specific chemical substance is subject to one of these SNURs only to a manufacturer or importer who has shown a *bona fide* intent to manufacture or import the substance. To establish a *bona fide* intent, the person must submit the information required under 40 CFR 721.11(b). EPA will make a determination as to whether the person has established a *bona fide* intent to manufacture or import the substance. If the person has established a *bona fide* intent, EPA will inform the person whether the chemical substance is included in the TSCA Inventory and subject to a specific SNUR.

Each of these SNURs designates exceeding a specific aggregate production volume as the significant new use by reference to 40 CFR 721.80(q). Section 721.80(q) is used when the specific volume is identified in the section 5(e) consent order but has been claimed as CBI. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance

subject to a SNUR is CBI. This procedure is incorporated by reference into each of these SNURs.

Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer (processors are not affected by the production volume significant new use unless they are also manufacturing or importing the substance) must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. In the case of these SNURs, the use would be the specific aggregate manufacturing and import volume intended by the person. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the production volume identified in the *bona fide* submission would be a significant new use under the rule. Since the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production are designated as significant new uses. Under that procedure, if a person showed a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, the person would automatically be told any production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. In those cases where a section 5(e) order

has been issued, the notice submitter is prohibited by the section 5(e) order from undertaking activities which EPA is designating as a significant new use. If a Notice of Commencement of Manufacture (NOC) has not yet been submitted to EPA for the substance and the substance has not yet been added to the TSCA Chemical Inventory, no other person may commence such activities without first submitting a PMN to EPA. Therefore, EPA has concluded that in cases where EPA has not received a NOC, the uses designated in the SNUR are not ongoing. Those who submitted the PMNs covered by this rule have not submitted NOCs for these substances.

However, EPA recognizes that if a substance identified in a SNUR is added to the Inventory prior to the effective date of the rule, the substance may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. If the uses which had commenced between the date of publication and the effective date were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow such persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in 40 CFR 721.45(h), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50575). The record includes information considered by EPA in developing this rule.

A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE-G004, 401 M St., SW., Washington, DC.

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of \$100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately \$4,500 to \$11,000, including a \$2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such

factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule will likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 13, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.266 to subpart E to read as follows:

§ 721.266 Adipic acid, polymer with 1,4-cyclohexane-dimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (PMN P-89-653) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:
(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.288 to subpart E to read as follows:

§ 721.288 Alkanepolyol phosphate ester (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanepolyol phosphate ester (P-89-448) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:
(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.295 to subpart E to read as follows:

§ 721.295 Reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid (PMNs P-89-703, P-89-755, and P-89-756) are subject to reporting under this section for significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:
(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of these substances: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.1082 to subpart E to read as follows:

§ 721.1082 Substituted ethylene diamine, methyl sulfate quaternized (generic name).

(a) *Chemical substance and significant new uses subject to*

reporting. (1) The chemical substance identified generically as ethylene diamine, methyl sulfate quaternized (P-89-650) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

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